

Christina Delotto, as Legal
Guardian for
Robert C. Delotto, III,
Plaintiff,

v.

TOWN OF WEST NEWBURY, et al.,
Defendants.

May 19, 2009

Plaintiff Christina Delotto ("Ms. Delotto") brings this action pursuant to 42 U.S.C. § 1983, claiming that the arrest and detention of her son, Robert Delotto, III ("Delotto"), a sixteen-year-old student at the time, violated his civil rights. Defendants have moved for summary judgment. After hearing, the Court **ALLOWS in part** and **DENIES in part** Defendants' motion for summary judgment (Docket No. 38).

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were not an illicit substance and had offered to retrieve the pill bottle for the police to prove it.

"Probable cause exists when the facts and circumstances within the police officers' knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent person in believing that defendant had committed or was committing an offense." United States v. Pardue, 385 F.3d 101, 107 (1st Cir. 2004) (quoting United States v. Fiasconaro, 315 F.3d 28, 34-35 (1st Cir. 2002)). Here, the police conducted two field tests of the unmarked pills which were found in Delotto's backpack by school authorities. These standard tests indicated that Delotto possessed amphetamines/methamphetamines. The field tests turned out to be faulty, but there is no evidence that the police officers knew that these tests had reported incorrect results. Accordingly, the Court allows summary judgment in favor of the officers on the claim of false arrest.

The Court also dismisses the civil rights claim against the Town, which was sued under a theory of municipal liability for allegedly providing faulty training to the police officers who conducted the field tests. This claim fails, however, because, at best, the evidence would support a claim of negligence.

A different question arises with regard to the claim that the police unreasonably detained Delotto, a sixteen-year-old boy, by handcuffing him to a bench in the booking area for

approximately two hours before transporting him to his arraignment.

Under the Fourth Amendment,¹ police may use only reasonable force to effectuate a detention and must ensure that there is not an unreasonable delay between an individual's arrest and presentation before a judicial officer. See Jarrett v. Town of Yarmouth, 331 F.3d 140, 148 (1st Cir. 2003) (stating that a claim of excessive force in the context of an arrest arises under the Fourth Amendment and is governed by an objective reasonableness standard) (citing Graham v. Connor, 490 U.S. 386, 394 (1989)); cf. Muehler v. Mena, 544 U.S. 93, 100 (2005) (stating that the duration of a detention can factor into a Fourth Amendment reasonableness determination); County of Riverside v. McLaughlin, 500 U.S. 44, 56 (1991) (holding that a probable cause hearing must be held promptly after a warrantless arrest and that an "unreasonable delay" would amount to a Fourth Amendment violation). Unreasonable delays include "delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will . . . or delay for delay's sake." McLaughlin, 500 U.S. at 56.

Plaintiff contends that although Delotto could have been

¹ The complaint, which is poorly crafted, references claims under the Fifth, Sixth, and Fourteenth Amendments, but these claims have not been pressed and are dismissed. Moreover, as established in Graham v. Connor, 490 U.S. 386, 394 n.10 (1989), the Fourth Amendment - not the Due Process Clause - governs claims which, like Delotto's, arise as a result of arrest.

brought promptly to the Lawrence District Court which was open for business, the police instead handcuffed him for two hours with the unlawful purpose of questioning him about his drug activities in the absence of his mother. According to Ms. Delotto, she was at the police station with a bottle to show that the pills were only vitamin supplements, but was told that she could not see her son there.² Moreover, according to plaintiff, when the boy asked to make a phone call during the questioning, the police refused, telling him that the previous opportunity to see his mother at school was his phone call.³

A two-hour delay between arrest and arraignment would not likely be deemed excessive for an adult. Cf. McLaughlin, 500 U.S. at 56 (holding that jurisdictions that provide probable cause hearings within forty-eight hours of arrest "will, as a general matter, comply with the promptness requirement" under the Fourth Amendment); Commonwealth v. Rosario, 422 Mass. 48, 56 (1996) (adopting, in a non-constitutional inquiry, a bright-line six-hour exclusionary rule and citing the Uniform Rules of Criminal Procedure Rule 311(b) stating, "a 'detained or arrested' individual must be brought before a magistrate within six hours . . . barring extraordinary circumstances"). Here, though, Delotto

² Defendants dispute that Ms. Delotto was told that she could not see her son.

³ This assertion is made in plaintiff's brief in opposition to summary judgment, but is not stated in plaintiff's statement of facts. Defendants dispute these circumstances.

was a juvenile with no record at the time of this incident, and there was no evidence that he was considered dangerous.

Moreover, questioning of a juvenile in the absence of a parent is ordinarily unlawful. "The standard for [a juvenile] who has attained the age of fourteen is that there should ordinarily be an opportunity for a meaningful consultation with a parent, interested adult, or attorney to ensure that [a Miranda] waiver is knowing and intelligent." Commonwealth v. A Juvenile, 402 Mass. 275, 279 (1988).

In sum, several facts are in dispute, and when all reasonable inferences are drawn in favor of plaintiff, a jury could reasonably conclude that the detention was unreasonable and violated Delotto's Fourth Amendment rights.

ORDER

The motion for summary judgment on this claim is **ALLOWED** on the federal civil rights claim of unlawful arrest in favor of the Town and police officers. The Court also dismisses plaintiff's claims under the Fifth and Sixth Amendments. Plaintiff raises numerous state law claims. The motion for summary judgment is

allowed to the extent these claims rest on the claim of unlawful arrest without probable cause. Otherwise, the motion is **DENIED**.

S/PATTI B. SARIS
United States District Judge